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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

THE ASSINIBOINE AND SIOUX
TRIBES OF THE FORT PECK INDIAN
RESERVATION,

Plaintiff,

v.

THE U.S. DEPARTMENT OF THE
INTERIOR, *et al.*,

Defendants,

and

TRANSCANADA KEYSTONE
PIPELINE, LP, *et al.*,

Defendant-Intervenors.

CV 20-44-BMM-JTJ

JOINT STATUS REPORT

Defendants U.S. Department of the Interior *et al.* (“Defendants”), Plaintiff Assiniboine and Sioux Tribes of the Fort Peck Reservation, and Defendant-Intervenors TC Energy *et al.* hereby submit this joint status report pursuant to the Court’s October 25, 2021 Order, ECF No. 85, and request that the case be stayed for an additional sixty days.

This case involves the U.S. Bureau of Land Management’s (“BLM”) approval of a right-of-way for the Keystone XL Pipeline and the U.S. Army Corps of Engineers’ (“Corps”) issuance of a permit for a portion of the pipeline to cross Corps-managed federal lands pursuant to the Rivers and Harbors Act, 33 U.S.C. § 408. The case has been stayed following President Biden’s revocation of the 2019 Presidential Permit allowing the pipeline to cross the border. *See* Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, 86 Fed. Reg. 7,037, 7,041 (Jan. 20, 2021). In addition, TC Energy announced the termination of the Keystone XL Pipeline Project on June 9, 2021. *See* TC Energy Corp. and TransCanada Keystone Pipeline, LP’s Notice Regarding Termination of Keystone XL Pipeline, *Indigenous Env’tl. Network v. Trump*, No. 4:19-cv-28-BMM (June 9, 2021), ECF No. 167 (“June 9, 2021 Notice”).

Since its announcement regarding the termination of the project, TC Energy has taken significant steps to wind down authorizations that the company obtained or sought from federal agencies. As previously reported, among other things, TC

Energy has relinquished an incidental take permit authorized by the U.S. Fish and Wildlife Service pursuant to section 10 of the Endangered Species Act and a temporary use permit for an access road from BLM. *See* October 25, 2021 Joint Status Report at 2, ECF No. 84. On August 31, 2021, BLM approved TC Energy's decommissioning plans for the border segment of the pipeline. *Id.* Subsequently, the Montana Department of Environmental Quality also approved TC Energy's decommissioning plans for the border segment. *Id.*

On September 2, 2021, BLM issued a decision to approve TC Energy's request for partial relinquishment of the right-of-way grant and temporary use permit ("TUP"). *Id.*; *see also* BLM Decision Approving Partial Relinquishment (Sept. 2, 2021), Ex. 1. BLM approved full relinquishment of the right-of-way grant and TUP for all portions of the right-of-way except for the 0.94-mile border segment. *See* October 25, 2021 Joint Status Report at 2. Retention of the right-of-way for the 0.94-mile border segment is necessary to enable TC Energy to complete decommissioning and reclamation activities consistent with the terms of the grant, including the bonding stipulations. As the decision notes, BLM will relinquish and close the right-of-way for the border segment upon completion and approval of reclamation.

On September 22, 2021, TC Energy began the removal of the pipeline consistent with the approved decommissioning plan. *See id.* Since the filing of the

last report, TC Energy has completed the removal of the pipeline in the international border segment and reclamation of the right-of-way area, including restoration of the disturbed areas. BLM and TC Energy had a closeout conference on November 2, 2021. *See* TC Energy November 19, 2021 Letter, Ex. 2. At the closeout conference, BLM and TC Energy discussed certain issues relating to the work that was performed, and those issues were resolved. *See id.*; BLM November 23, 2021 Letter, Ex. 3. As noted above, TC Energy currently retains a limited right-of-way grant to ensure that reclamation, *i.e.*, revegetation, of the border segment is successful.

Defendants request this extension to allow BLM to determine that the site has appropriately revegetated. Once that occurs, BLM will approve TC Energy's relinquishment of this last remaining right. At that point, Defendants will confer with Plaintiffs to discuss whether any further proceedings are necessary.

The requested extension of the stay will not prejudice any party because TC Energy has announced that it has no plans to construct the pipeline "now or at any time in the future," June 9, 2021 Notice at 3, and it has now removed the pipe that was previously installed. Moreover, TC Energy has relinquished, or is in the process of relinquishing, the federal permits that would allow it to construct the pipeline. Further, Defendants and TC Energy remain obligated to provide the

parties and the Court with sixty days' notice in advance of any theoretical construction of the main pipeline or new pump stations.

In light of these developments, the parties respectfully request that the Court continue the stay of the litigation deadlines for sixty days, so that the parties may determine what further proceedings may be necessary in this case. *See Landis v. N. American Co.*, 299 U.S. 248, 254 (1936) (a court has inherent authority to stay litigation). At the end of the sixty-day period, the parties will advise the Court whether further proceedings are necessary and, if so, propose a revised briefing schedule. If the parties need additional time to discuss potential further proceedings, the parties will submit a status report and request additional time to continue their discussions. The parties retain the right to ask the Court to lift the stay in response to changes in conditions on the ground.

Respectfully submitted this 23rd day of December, 2021,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), the foregoing brief is proportionately spaced, has a typeface of 14 points, and contains 820 words, excluding the tables, caption, signature, certificate of compliance, and certificate of service.

/s/ Luther L. Hajek
LUTHER L. HAJEK
U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2021, a copy of the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s/ Luther L. Hajek
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U.S. Department of Justice